



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2015

Mr. J. Macklin Milligan
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002-1901

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-08842

Dear Mr. Milligan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 562439.

The Harris County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case involving the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information pertains to a completed criminal investigation subject to section 552.022(a)(1). The district attorney's office must release the submitted information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act

or other law. *See id.* Although you raise section 552.111 of the Government Code for the submitted information, we note section 552.111 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). As such, the district attorney's office may not withhold any portion of the submitted information under section 552.111. The attorney work product privilege, which is encompassed by section 552.111, is also found in rule 192.5 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 192.5. The Texas Supreme Court has held "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and the submitted information may not be withheld on that basis. As you raise no further exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 562439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

NOV 24 2015

At 1:50 P.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-001946

DEVON ANDERSON, DISTRICT
ATTORNEY OF HARRIS COUNTY,
TEXAS,
Plaintiff,

v.

KEN PAXTON, ATTORNEY
GENERAL OF THE STATE OF
TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Devon Anderson, District Attorney of Harris County, Texas (District Attorney), sought to withhold certain information from public disclosure. All matters in controversy between the District Attorney and Defendant Ken Paxton, Attorney General of Texas, arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that in compliance with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Ms. Ivy A. Hill, on October 29, 2015, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that the District Attorney may withhold the information at



issue. The requestor was also informed of her right to intervene in the suit to contest the District Attorney's right to withhold the information. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

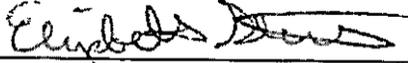
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The District Attorney may withhold the information at issue, which consists of two pages of a prosecutor's notations relating to the prosecution of a crime, under Texas Government Code section 552.108(b)(3).
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims between the District Attorney and the Attorney General and is a final judgment.

SIGNED the 24 day of November, 2015.


PRESIDING JUDGE

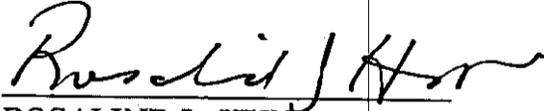
AGREED:



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ATTORNEY GENERAL OF TEXAS